STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition

of

JOHN MERA ASSOCIATES, INC.
T/A COUP-PAK

for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period September 1, 1976 through November 30, 1985.

In the Matter of the Petition

of

J.T.M. GROUP, INC.
T/A COUP-PAK

for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period December 1, 1985 through May 31, 1987.

In the Matter of the Petition

of

JOHN MERA, OFFICER OF
JOHN MERA ASSOCIATES,
INC. T/A COUP-PAK

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DETERMINATION
DTA NOS. 808472, 808473, 808474 AND 808475

Petitioners John Mera Associates, Inc. T/A Coup-Pak, and John Mera, officer of John Mera Associates, Inc., filed petitions for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1976 through November 30, 1985.

Petitioners J.T.M. Group, Inc. T/A Coup-Pak, and John Mera, officer of J.T.M. Group, Inc., filed petitions for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1985 through May 31, 1987.

A hearing was held before Jean Corigliano, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York on July 17, 1991 at 1:15 P.M., with all briefs to be submitted by December 22, 1991. Petitioner's brief was filed on November 15, 1991. The brief of the Division of Taxation was filed on December 16, 1991. Petitioners were represented at the hearing by John Mera, appearing pro se. A brief was filed by petitioners' representative, Daniel H. Link, Esq. The Division of Taxation was represented by William F. Collins, Esq. (Carroll R. Jenkins, Esq., of counsel).

ISSUES

I. Whether the notices of determination issued to John Mera Associates, Inc. T/A Coup-Pak, and John Mera, as officer of John Mera Associates, Inc., were barred by the statute of limitations.

II. Whether petitioners have established that the audit method employed was unreasonable or the audit results were incorrect.

III. Whether petitioners have shown reasonable cause for any failure to comply with the Tax Law.

IV. Whether the Division of Tax Appeals properly denied petitioners' motion to move the hearing to New York City.

V. Whether the Division of Tax Appeals properly denied petitioners' motion for adjournment of the hearing.

FINDINGS OF FACT

On January 20, 1989, the Division of Taxation ("Division") issued to petitioner John Mera Associates, Inc. T/A Coup-Pak ("Coup-Pak"), four notices of determination and demands for payment of sales and use taxes due as follows: a notice of determination was issued for the period September 1, 1976 through February 28, 1980, assessing tax of $17,838.96 plus penalty and interest; a notice of determination was issued for the period March 1, 1980 through August 31, 1983, assessing tax of $28,080.26 plus penalty and interest; a notice of determination was issued for the period September 1, 1983 through November 30, 1985, assessing tax of $34,187.76 plus penalty and interest; and a notice was issued for the period June 1, 1985 through November 30, 1985, assessing an additional penalty of $991.29. On the same date, four notices of determination and demands for payment of sales and use taxes due were issued to petitioner John Mera, officer of John Mera Associates, Inc., assessing identical amounts of tax, penalty and interest as that assessed against Coup-Pak for the same periods.

On January 20, 1989, the Division issued to petitioner J.T.M. Group, Inc. ("J.T.M.") two notices of determination and demands for payment of sales and use taxes due. The first notice was for the period December 1, 1985 through May 31, 1987 and assessed tax of $26,979.78 plus penalty and interest. The second notice was for the period December 1, 1985 through February 28, 1987 and assessed additional penalty of $2,739.00. On the same date, the Division issued two notices of determination and demands for payment of sales and use taxes due to petitioner John Mera, officer of J.T.M. Group, Inc., assessing identical amounts of tax, penalty and interest for the same periods as that assessed against J.T.M.

During the period September 1, 1976 through November 30, 1985, Coup-Pak operated a direct mail advertising business. Coup-Pak solicited clients to take part in an advertising campaign which consisted primarily of the distribution by mail of advertising brochures, pamphlets and discount coupons. It advised its clients, designed or helped in the design of the items to be mailed, maintained or rented mailing lists and supervised the printing and mailing of the items. It hired a printer and direct mail company to actually produce and mail the advertisements and coupons. Coup-Pak was not registered as a vendor and did not collect sales

tax on charges for its services. J.T.M. operated the advertising business from December 1, 1985 through May 31, 1987, and it was registered as a sales tax vendor during that period. In June 1985, J.T.M. began trading as American Barter Exchange. It sold products to participants in the Barter Exchange through two entities, American Business Products and American Carpet Exchange.

The Division's audit of Coup-Pak began in 1986. A letter dated May 12, 1986 was sent by the Division to Coup-Pak advising that a routine sales tax examination was to begin on June 26, 1986 at Coup-Pak's offices. Coup-Pak was asked to have available all books and records pertaining to its sales tax liability for the period June 1, 1983 through February 28, 1986. A second letter, dated September 19, 1986, was sent to Coup-Pak c/o John Mera, confirming the scheduling of an audit appointment at the office of Steven Bellask on October 15, 1986.[1] Coup-Pak was again asked to make available all books and records pertaining to its sales tax liability for the audit period. A memorandum dated September 22, 1986 was sent to Mr. Bellask by the Division's auditor, confirming the audit appointment and providing a copy of the letter sent to Coup-Pak.

The auditor finally met with Mr. Bellask on November 7, 1986. At that time the only records provided were incomplete cash receipts records and copies of some contracts between Coup-Pak and its clients.

By letter dated April 17, 1987, the Division made a third request for books and records, including: copies of New York State corporation franchise tax returns for whatever years filed; the Federal tax identification numbers of Coup-Pak and J.T.M.; New York State corporation franchise tax returns for J.T.M. if filed; cash receipts records for Coup-Pak, beginning in 1977, including bank statements; cash and check disbursement records for the years 1977 through 1987 showing all purchases of Coup-Pak and J.T.M.; bills showing purchases of fixed assets made by either Coup-Pak or J.T.M. by cash, check or barter; expense purchase invoices for

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[1]A power of attorney appointing Mr. Bellask to represent Coup-Pak in the audit was executed by Mr. Mera on October 8, 1986 and provided to the Division.

Coup-Pak and J.T.M.; and bills for mailing list rentals, purchases of graphics and other purchases. The letter also requested the names of participants involved in American Barter Exchange in the years 1984 through 1986 and the billing records of American Barter Exchange. The letter indicates that the auditor had previously reviewed bank statements for the period 1983 through August 1986.

The only records made available in response to these requests were cancelled checks and bank statements for the period May 1976 through May 1987. Initially, the Division attempted to determine petitioners' tax liability by analysis of these records. The auditor determined that petitioners' direct mail business was in essence an advertising agency; therefore, charges made to its customers were deemed to be exempt from sales tax. Petitioners' purchases of tangible personal property and taxable services were considered to be subject to sales tax. Petitioners' gross purchases were calculated by reference to the cancelled checks. All disbursements not obviously made for nontaxable purchases (such as salaries, utility bills, etc.) were treated as purchases subject to sales tax. Since petitioners submitted no purchase invoices showing tax paid on purchases, it was assumed that petitioner failed to pay sales tax on the total amount of these purchases. Using the cancelled checks, the auditor computed total purchases of $1,487,821.81, with a tax due on that amount of $114,783.74. The Division also determined that J.T.M., trading as American Barter Exchange, failed to report sales tax due during the audit period in the amount of $526.23.[2]

On or about September 20, 1987, the Division issued several statements of proposed audit adjustment to Coup-Pak and J.T.M. which, taken

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[2]J.T.M. filed a single sales tax return for the quarter ended May 31, 1987 where it reported sales made by American Barter Exchange during the period June 1, 1985 through May 31, 1987. The Division determined that the total amount of taxable sales reported was accurate, but the amount of tax due was incorrect due to the fact that J.T.M. applied an 8 percent sales tax to the total. The correct tax rate was 8¼ percent for the period June 1, 1985 through December 31, 1985 and 8 percent thereafter.

together, asserted a tax liability of $115,309.97. Mr. Mera returned these statements with the following notation made on each page:

"I disagree on the following basis:

1. The figures are totally inaccurate.
2. No tax is due under any circumstances.

The mailing service was performed for a third party for whom it is ilegal [sic] to pay the tax. (Check your last bulletin)."

The auditor's log for the period following the issuance of the statements of proposed audit adjustment indicates that the Division was hesitant to proceed with the issuance of notices of determination without seeking more documentation. Consequently, by letter to Mr. Mera dated January 29, 1988, the Division repeated its request for the books and records of Coup-Pak and J.T.M. The letter stated that the period under audit was September 1, 1976 through May 31, 1987 and essentially requested cash receipts journals, cash disbursements journals, purchase invoices and Federal and State tax returns for both corporations for the period under audit. It also repeated the Division's request for the names of those persons participating in American Barter Exchange. No records were made available in response to this request.

On July 28, 1988, two subpoenas were served upon Mr. Mera, requesting him to appear at the offices of the Division on August 10, 1988 and to produce all records of Coup-Pak and J.T.M. for the period September 1, 1976 through November 30, 1985 required to be kept pursuant to 20 NYCRR 533.2, including general ledgers, sales and purchase journals, sales and purchase invoices, Federal and State corporation tax returns and a description of the accounting system employed by the corporations.

In response to the subpoena, Mr. Mera telephoned the auditor and requested that the auditor come to his business premises to review the books and records. The auditor complied with this request. On August 10, 1988, Mr. Mera allowed the auditor to review several cartons of purchase invoices, filed alphabetically. These were the only records produced in response to the Division's subpoenas.

The auditor attempted to correlate the purchase invoices to the cancelled checks she had

previously reviewed and listed on worksheets. Whenever an invoice showed sales tax paid, she eliminated the amount of the receipt from her earlier calculations. Using this methodology, the auditor reduced total purchases subject to sales tax to $1,382,348.00, with a tax due on that amount of $106,560.53.

Petitioners requested and were granted a conciliation conference to challenge the statutory notices of determination. A conference was held on February 23, 1990. Mr. Mera appeared on behalf of petitioners. As a result of the conference, the Division issued four conciliation orders, dated May 4, 1990, sustaining the notices of determination.

On August 1, 1990, petitioners each filed a petition protesting the Division's conciliation orders. Each of the petitions was signed by Mr. Mera, and there was no indication that petitioners were represented by anyone other than Mr. Mera.

The Division served its answer to the petitions on, or about, January 25, 1991. In a cover letter to Mr. Mera, the Division's attorney stated:

> "This matter will be scheduled for hearing at the New York City offices of the Division of Tax Appeals. The Division of Tax Appeals will advise the parties of the time and place for the hearing."

The Division of Tax Appeals scheduled a hearing in Troy, New York on May 22, 1991. That hearing was adjourned at Mr. Mera's request. In a letter to Mr. Mera dated May 7, 1991, Assistant Chief Administrative Law Judge Daniel J. Ranalli stated:

> "Since you have just retained an attorney to represent you in the above matters I will adjourn the hearing until Monday, July 17, 1991 at 1:15 p.m.[3] You should be prepared at that time since no further adjournments will be granted. Your attorney will also need to execute powers of attorney for you and the two corporations in order to appear. I have enclosed the forms for your convenience. Please have him return them to me as soon as possible."

On June 10, 1991, the Division of Tax Appeals mailed formal notices of hearing to petitioners at the address shown on all of the petitions, 585 Stewart Avenue, Garden City, New York 11530. At that time the Division of Tax Appeals had not yet received powers of attorney

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[3] July 17, 1991 actually fell on a Wednesday, rather than a Monday.

appointing anyone other than Mr. Mera to represent petitioners in proceedings conducted in the Division of Tax Appeals. The notices accurately stated that a hearing was scheduled on Wednesday, July 17, 1991 at 1:15 PM in Troy, New York. The notices also contained the following statement:

> "An adjournment may be requested but will be granted only for good cause and only if the request is received in writing at least 15 days prior to the hearing date, and only to such time and place as the Division of Tax Appeals finds appropriate." (Emphasis in original.)

On July 3, 1991, Judge Ranalli received a letter from Daniel H. Link, an attorney and certified public accountant, and four powers of attorney executed by Mr. Mera appointing Mr. Link to represent petitioners. The letter stated in relevant part:

> "I am in receipt of a copy of your letter to John Mera dated May 7, 1991.
>
> "I am uncertain whether you mean Monday July 15, 1991 or Wednesday July 17, 1991. In either case, I will be out of town for most of July and will be unable to make either date.
>
> "In addition, the issues in the case will require some time to research and with tax return filing deadlines in August, I will be unable to make an appearance until late August or September. Further the requirement to appear in Troy rather than a local regional office imposes an additional financial and logistics burden. I understand that this latter requirement is under appeal by the New York State CPA Society and I would appreciate awaiting that outcome rather than incur an unnecessary expense for my client.
>
> I will call you mid July to discuss rescheduling."

Judge Ranalli denied Mr. Link's request for an adjournment by letter dated July 11, 1991. It states:

> "Your request for an adjournment of the hearing on the above matters is denied. Mr. Mera was granted an adjournment in May as you are aware, because you had just been retained and needed time to prepare. You have now had two months, and no further extensions will be granted.
>
> The hearing notice sent to Mr. Mera on June 10, 1991 accurately reflects the correct hearing date of Wednesday, July 17, 1991 at 1:15 p.m. Failure to appear will result in a default order."

A hearing was held on July 17, 1991 as scheduled. Mr. Mera appeared on behalf of the petitioners. He made a motion for an adjournment of the proceedings which was opposed by the Division. Mr. Mera sought the adjournment for several purposes. First, he wanted time for

his representative to prepare his case, and he wanted the hearing scheduled at a date and time when his representative would be able to appear. In addition, he wanted to adjourn and continue until such time as the Division of Tax Appeals ruled "on the New York State CPA Society's appeal to rescind the requirement to appear in Troy."[4]

The administrative law judge denied petitioners' motion for an adjournment. In response, Mr. Mera stated his objection to going forward with the hearing and to the decision of the Division of Tax Appeals to schedule all hearings in Troy, New York. He also stated that by denying an adjournment the Division of Tax Appeals was denying him the constitutional right to representation. He refused to submit evidence or testify on his own behalf.

The administrative law judge left the record open until September 17, 1991 to enable petitioners' attorney to review the record and to submit evidence or a brief or take whatever other action he deemed appropriate. This date was later extended to November 15, 1991.

Petitioners' attorney filed a brief which contained both allegations of fact and arguments of law. No documentary evidence or affidavits were submitted on petitioners' behalf after the hearing.

Each of the petitions filed alleged the same error by the Commissioner of Taxation, namely the following:

> "All services offered by the petitioner were offered for re-sale. Therefore, the levy of a compensating use tax is invalid and should be rescinded."

CONCLUSIONS OF LAW

A. It is petitioners' position that the third-party vendors from whom purchases were made were ultimately liable for the collection and payment of

the sales tax in question. Accordingly, they argue that the Division was obligated to request the records of those vendors to determine whether the sales tax had been paid or not. Petitioners

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[4]There is no evidence in the record of such an appeal being made to the Division of Tax Appeals by the CPA Society or any other entity.

contend that the auditor's calculations are without any basis since she relied on cancelled checks to determine the amount of petitioners' purchases and those checks did not show whether sales tax had been paid or not. In connection with this argument, petitioner takes the position that the burden of proof was upon the Division to establish that the correct amount of tax had not been paid on each transaction and that it failed to carry its burden. Petitioner claims that receipts connected with the mailing envelopes (printing of the envelopes, affixing of labels, etc.) were exempt from tax pursuant to section 1115(a)(19) of the Tax Law as materials used in packaging tangible personal property for sale. Petitioners also claim that the envelopes were stuffed by individuals working in or for a tax exempt organization. Petitioners' brief states:

> "Contributions were made by the Petitioner [to the tax exempt organization]. Clearly no tax was due here as these transactions were specifically exempt under the Tax Law Article 28 Sections 1105 and 1110."

It is petitioners' position that, absent a showing of fraud or willful intent to evade the tax, personal liability cannot be imposed upon Mr. Mera as an officer of the corporation. Petitioners claim that the notices of determination issued for the period September 1, 1976 through November 30, 1985 are barred by the statute of limitations. In their brief, petitioners state "that the hearing was not properly held, in that the Notice of the Hearing was called for Monday, July 17, 1991, when in fact the Hearing was held on Wednesday, July 17, 1991" and petitioners' counsel was not available for the hearing.

B. Section 1105(a) of the Tax Law imposes a sales tax on the receipts from every retail sale of tangible personal property in New York unless exempted from taxation by a provision of article 28. Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the service of furnishing information by printed matter (Tax Law § 1105[c][1]) or the service of "producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale," upon which the service is performed (Tax Law § 1105[c][2]). Section 1105(c)(1) specifically excludes from taxation receipts from the sale of the services of advertising agents or other persons acting in a representative capacity.

The Division deemed the direct mail services sold by petitioner to be the services of an advertising agency exempt from tax under this section of the law. In their brief, petitioners explicitly accepted this characterization and claimed that all sales made by them are exempt from tax pursuant to Tax Law § 1105(c)(1).

In their petition, petitioners stated that all materials and services purchased by petitioners were for resale and consequently not subject to tax. Petitioners misapprehend the law.

Section 1105(a) of the Tax Law imposes a sales tax on "receipts from every retail sale of tangible personal property". The regulations of the Commissioner of Taxation and Finance provide:

> "The term purchase at retail means a purchase by any person of tangible personal property or services, for any purpose other than:
>
> (a) for resale of the property or services as such or when the property is purchased for resale as a physical component part of tangible personal property; or
>
> (b) for use by the purchaser in performing services subject to [sales] tax where the property becomes a physical component part of the property upon which the services are performed or is later actually transferred to his customer in conjunction with the taxable services performed." (20 NYCRR 526.3; see Tax Law § 1101[b][4].)

The purchase of services and materials subject to tax under section 1105, subdivisions (a) and (c), by an advertising agent who will use those materials and services to perform advertising services (which are not subject to tax under section 1105[c][1]) are purchases at retail and are subject to sales tax (Matter of Laux Advertising v. Tully, 67 AD2d 1066, 414 NYS2d 53; 20 NYCRR 524.4[c][2]).

Petitioners submitted no evidence whatsoever; consequently, the only description of petitioners' services available to me in arriving at a determination is that provided by the Division.[5] The Division's evidence was sufficient to establish that petitioner made purchases of

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[5]In his brief, petitioners' representative made certain factual allegations unsupported by testimony, affidavit or other documents. There is nothing in the record to suggest that Mr. Link has any personal knowledge of the facts alleged. Hearsay is admissible in administrative proceedings and may constitute substantial evidence to support a determination (Matter of Flanagan v. New York State Tax Commission, 154 AD2d 758, 546 NYS2d 205); however, in the absence of any evidence in the record to support Mr. Link's allegations and his failure to state the

goods and services subject to sales tax. According to the Division's worksheets, petitioners purchased tangible personal property (e.g., envelopes) subject to tax under section 1105(a) of the Tax Law; printing services taxable under section 1105(c)(2) of the Tax Law; and services associated with the mailing of the coupons and promotional materials, such as the printing and affixing of mailing labels, again taxable under section 1105(c)(2). Petitioner also purchased or rented mailing lists, and these transactions were subject to

tax as the purchase of information services under section 1105(c)(1) of the Tax Law (see, Matter of Names in the News v. State Tax Commn., 75 AD2d 145, 429 NYS2d 755). Petitioners' purchases of these goods and services were for use in performing a nontaxable service; hence, they were not purchases for resale and were subject to sales tax.

Under section 1132 of the Tax Law, petitioners' vendors were required to collect sales tax from petitioners when collecting the price for any item or service to which the tax applied. However, petitioners cannot use their vendors' statutory obligations as a means of immunizing themselves from liability for sales taxes imposed by statute. Section 1133(b) of the Tax Law provides:

> "Where any customer has failed to pay a tax imposed by this article to the person required to collect the same, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the customer directly to the [commissioner of taxation and finance] and it shall be the duty of the customer to file a return with the tax [commissioner] and to pay the tax to [him] within twenty days of the date the tax was required to be paid" (emphasis added).

Section 1138 of the Tax Law provides:

> "If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of taxation and finance from such information as may be available."

The Division's audit establishes that petitioners did not pay the sales tax due on all of their purchases of taxable goods and services and did not file sales tax returns reporting the tax due on their purchases. Thus, the Division was authorized by section 1138(a)(1) to determine

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source of his information, those factual allegations are deemed to have no probative value.

petitioners' tax liability from the information available. After innumerable requests for petitioners' books and records and the issuance of two subpoenas, that information consisted of cancelled checks and petitioners' purchase invoices.[6] Based on those records, the Division calculated petitioners' tax liability.

C. Where, under the authority of section 1138(a)(1), the Division determines that sales tax is due, it need only select an audit method reasonably calculated to reflect the tax due and the burden is then upon the petitioner to show some error in either the audit method or results (Matter of Meskouris Bros. v. Chu, 139 AD2d 813, 526 NYS2d 679). The Division's audit, relying as it did on petitioners' own records of purchases, cannot be said to lack a rational basis. Moreover, the Division provided evidence of the method by which the audit was conducted, presented the testimony of the auditor who actually conducted the audit, made the auditor available for cross-examination, and offered into evidence worksheets listing the cancelled checks the auditor relied on to compute the tax due. In short, the Division introduced sufficient evidence to enable a trier of fact to determine whether the audit had a rational basis and to enable petitioners to meet their burden of proof (cf., Matter of Vincent Basileo, Tax Appeals Tribunal, May 9, 1991; Matter of Fashana, Tax Appeals Tribunal, September 21, 1989). Contrary to petitioners' assertions, the Division had no burden to do more. Inasmuch as the burden of proof was upon petitioners to show any error in the auditor's calculations, the Division had no obligation to subpoena or review the books and records of petitioners' vendors to determine whether sales tax due from petitioners had been collected or paid over by those vendors (cf., Matter of Continental Arms

Corp. v. State Tax Commn., 72 NY2d 976, 534 NYS2d 362). Petitioners offered no evidence to show that the assessed tax was paid by petitioners or their vendors; therefore, they failed to carry their burden of proof.

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[6]In their brief, petitioners state that the tax was determined on the basis of the cancelled checks alone. This simply was not the case (see Findings of Fact "11" and "12").

D. In their brief, petitioners raised two issues not raised by their petitions or at hearing: (1) whether notices of determination issued for the period September 1, 1976 through November 30, 1985 are barred by the statute of limitations; and (2) whether petitioners are not liable for the taxes due on the ground that they were merely acting as agents for their clients. The Division argues that petitioners should not be allowed to raise these issues in their brief, inasmuch as they failed to raise them at hearing or in their petitions.

The procedure followed at this hearing was somewhat unusual because petitioners appeared without representation after requesting and being denied an adjournment to allow their attorney to be present. The record was left open to allow petitioners' attorney to submit evidence by mail after reviewing the transcript and the documentary evidence offered by the Division. There is no question that petitioners would have been allowed to amend their petitions at hearing had they introduced evidence to prove their contentions and moved to amend at that time (see, Matter of Allied Aviation, Tax Appeals Tribunal, June 27, 1991); accordingly, I see no reason why petitioners should not be allowed to raise these issues after review of the entire record by their attorney. However, in these matters, as in others raised before the Division of Tax Appeals, the burden of proof was upon petitioners, and they failed to carry that burden.

The statute of limitations for assessment of sales and use taxes is three years from the time a return is filed (Tax Law § 1147[b]). There is no evidence that Coup-Pak ever filed a sales tax return; therefore, the statute of limitations does not apply to the notices issued to Coup-Pak or to John Mera, as officer of Coup-Pak. J.T.M. filed a sales tax return for the period ended May 31, 1987, but petitioners offered no evidence to establish the date of filing of that return. Without such evidence, the date upon which the statute commenced to run cannot be determined, and petitioners' claim that the notices of determination were untimely must fail.

Petitioners' did not submit evidence to show that Coup-Pak and J.T.M. acted only as agents for their customers. A determination of an administrative agency must be supported by substantial evidence in the record (see, Matter of Mobley v. Tax Appeals Tribunal, ___ AD2d

___, 576 NYS2d 412), and here, there is not substantial evidence in the record to support a determination that Coup-Pak and J.T.M. acted as agents for their clients.

E. Other issues raised in petitioners' brief lack any merit and can be dismissed summarily. Petitioners have produced no evidence to show that they purchased services from tax exempt organizations. Even if that fact were proven, it would not relieve petitioners of the obligation to pay sales tax on otherwise taxable transactions.

Tax Law § 1115(a)(19) exempts from the sales tax:

> "Cartons, containers, and wrapping and packaging materials and supplies, and components thereof for use and consumption by a vendor in packaging or packing tangible personal property for sale, and actually transferred by the vendor to the purchaser."

Inasmuch as petitioners did not sell tangible personal property, the envelopes used to mail the coupons were not exempt from sales tax under Tax Law § 1115(a)(19).

Finally, Tax Law § 1145(a)(1)(i) and (vi) imposes penalty on "any person" who fails to timely pay the required tax. Mr. Mera has not contended that he was not a person required to pay tax on behalf of Coup-Pak or J.T.M. As such a person, he is liable for the penalties and interest imposed (see, Matter of Hall v. Tax Appeals Tribunal, ___ AD2d ___, 574 NYS2d 862, 864).

F. Petitioners' contention that the hearing in this matter was conducted in violation of their rights to a fair hearing is rejected. Petitioners received adequate formal notice of the correct date and time of the administrative hearing (State Administrative Procedure Act § 301.2; 20 NYCRR 3000.10[a]). Mr. Mera represented petitioners at the conciliation conference and appeared at hearing. Information provided by the Division at these proceedings adequately informed him of the basis for the Division's determination of tax due. The record was left open to allow petitioners' attorney to review the record, submit evidence or proceed in any other manner he deemed appropriate. In short, petitioners were not denied notice or an opportunity to be heard.

The Tax Appeals Tribunal's rules governing adjournments were accurately conveyed to petitioners in the hearing notices: adjournments are granted only for good cause (20 NYCRR

3000.10[a][1]). In this case, petitioners were granted one adjournment in order to allow petitioners to obtain a representative and to allow the representative an opportunity to review and prepare this case. Petitioners then asked for a second adjournment based upon the unavailability of their appointed representative and the inconvenience of having the hearing conducted in Troy, New York. These were not considered reasonable cause for granting an adjournment. Petitioners were informed in May 1991 that a hearing would be held on July 17, 1991. They and their representative had ample opportunity to clarify any confusion caused by the misstatement of the day of the week, to seek an alternate date to accommodate Mr. Link's schedule, or to prepare their case for hearing. Instead, Mr. Link informed the Division of Tax Appeals, two weeks before the hearing, that he would not be available for any appearance until late August or September. He failed to explain why he would be unavailable except to state that he would be out of town and that he needed time to research the issues in the case and to perform other duties for other clients. In view of the first adjournment, these are not good causes to grant an adjournment. If they were, the Division of Tax Appeals might never hold another hearing. Petitioners had two months' notice of the July 17, 1991 hearing. It was their obligation to obtain the services of a representative able to appear at that hearing. Consequently, they must bear any consequences that result from their failure to do so.

Petitioners' request that the hearing be adjourned to the New York City area cannot be granted. With limited exception, all hearings before an administrative law judge are now held in Troy, New York.

G. The petitions of John Mera Associates, Inc., J.T.M. Group, Inc., and John Mera are denied, and the notices of determination and demands for payment of sales and use taxes due, dated January 20, 1989, are sustained.

DATED: Troy, New York

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ADMINISTRATIVE LAW JUDGE